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PREPARATORY COMMITTEE ON THE
ESTABLISHMENT OF AN
INTERNATIONAL CRIMINAL COURT
16 March-3 April 1998

DRAFT TEXT RELATING TO FINAL CLAUSES, FINAL ACT AND ESTABLISHMENT OF A PREPARATORY COMMISSION*

I. FINAL CLAUSES

Article A

Settlement of disputes

1. Any dispute between two or more States Parties concerning the interpretation or application of this Statute which cannot be settled through negotiation within a reasonable time shall, at the request of any one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties to the dispute are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice, by application, in conformity with the Statute of that Court. If one or more States Parties to the dispute has made a declaration in accordance with paragraph 2, the present paragraph shall apply to the other parties to the dispute as far as possible.

2. Each State may at the time of signature, ratification, acceptance or approval of this Statute or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party which has made such a declaration.

3. Any State which has made a declaration in accordance with paragraph 2 of this article may at any time withdraw that declaration by notification to the Secretary-General of the United Nations.

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* Prepared by the Secretariat.

Article B

Reservations

No reservations may be made to this Statute.

Article C

Amendments

1. At any time after the entry into force of this Statute, any State Party may propose amendments thereto. The text of any proposed amendment shall be submitted to the Registrar, who shall promptly circulate it to all States Parties.

2. A proposed amendment to this Statute shall be considered at the next Meeting of States Parties, provided that no consideration shall take place until [3] months after its circulation pursuant to paragraph 1.

3. The adoption of an amendment at a Meeting of States Parties shall require a [2/3] [3/4] majority of [all the States Parties] [those present and voting].

4. The Registrar shall transmit any amendment adopted at a Meeting of States Parties to the Secretary-General of the United Nations, who shall circulate it to all States Parties.

5. An amendment adopted at a Meeting of States Parties shall enter into force for all States Parties [60] days after instruments of acceptance have been deposited with the Secretary-General of the United Nations by [2/3] [3/4] of [all the States Parties] [those present and voting].

Article D*

Simplified amendment procedure

Modification of [articles ... or Part ...] shall be made subject to the following procedure:

(a) Any State Party may submit proposals for modifying [articles ... or Part ...], which shall be transmitted to the Registrar who shall promptly circulate such proposals to all States Parties for consideration;

(b) On behalf of the Court, the President may propose any modification of [articles ... or Part ...], which shall be transmitted to the Registrar who shall promptly circulate such proposals to all States Parties for consideration;

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* This article is intended to provide a simplified procedure for amending those provisions which might require adjustments to meet practical needs.

(c) [Five] [Ten] months after the circulation of proposals, they shall be deemed to have been adopted and the provisions amended accordingly unless within that period one third of the States Parties have objected thereto. The proposals shall then come into effect 30 days after their adoption.

OR

(c) Any proposals made under paragraphs (a) and (b) shall be referred to a Standing Committee of the States Parties, which shall be composed of [five] States Parties elected by the Meeting of States Parties. The Standing Committee shall make a recommendation after having considered the proposals. The recommendation shall be circulated by the Registrar of the United Nations to all States Parties to the Statute. [Five] [Ten] months after the circulation of proposals, they shall be deemed to have been adopted and the provisions amended accordingly, unless within that period one third of the States Parties have objected thereto. The proposals shall then come into effect 30 days after their adoption.

Article E

Review of the Statute

1. At any time after the entry into force of this Statute, the Meeting of States Parties may decide, by a two-thirds majority [of those present and voting], to convene a special Meeting of States Parties to review the Statute.

2. Any amendment to the Statute proposed at such a Meeting of States Parties shall be subject to paragraphs 3 to 5 of article C.

Article F

Signature, ratification, acceptance, approval or accession

1. This Statute shall be open for signature by all States in Rome, at the headquarters of the Food and Agriculture Organization of the United Nations, on 20 July 1998. Thereafter, it will remain open for signature in Rome at the Ministry of Foreign Affairs of Italy until 20 October 1998. After that date, the Statute shall remain open for signature in New York, at United Nations Headquarters, until 31 December 2000.

2. This Statute is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

3. This Statute shall be open to accession by any State. Instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article G

Entry into force

1. This Statute shall enter into force on the [60th] day following the date of the deposit of the [...] instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.

2. For each State ratifying, accepting, approving or acceding to the Statute after the deposit of the [...] instrument of ratification, acceptance, approval or accession, the Statute shall enter into force on the [60th] day after the deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article H

Withdrawal

1. Any State Party may withdraw from this Statute by written notification to the Secretary-General of the United Nations.

2. Withdrawal shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations. The withdrawal shall not affect any obligations of the withdrawing State under the Statute.

Authentic texts

The original of this Statute, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Statute.

DONE, this 20th day of July 1998, at Rome.

II. FINAL ACT

1. The Final Act of the Conference contains a summary of the background and proceedings of the Conference:

- An Introduction tracing the developments which led to the Conference;
- A list of participants;
- The officers and structure of the Conference;
- A summary of its organization, rules of procedure and proceedings.

2. The Final Act is not part of the Statute. It is drafted in the same languages as the Statute and is signed by the President of the Conference, the Executive Secretary and all participants wishing to do so. Special full powers will not be required for signature of the Final Act; credentials issued for the Conference are sufficient.

The Final Act may also include any other resolutions or decisions of the Conference, either in its main text or as annexes thereto.

III. ESTABLISHMENT OF A PREPARATORY COMMISSION

1. If it is deemed necessary to establish a preparatory commission, this can best be done by means of a resolution to be adopted by the Conference. Such a resolution should form part of the Final Act.

2. Its text might read as follows:

"The Conference on the Establishment of an International Criminal Court,

"Having adopted the Statute of the International Criminal Court,

"Having decided to take all possible measures to ensure the coming into operation of the International Criminal Court without undue delay and to make the necessary arrangements for the commencement of its functions,

"Having decided that a preparatory commission should be established for the fulfilment of these purposes,

"Decides as follows:

"1. There is hereby established the Preparatory Commission for the International Criminal Court. Upon signature of or accession to the Statute by forty States, the Secretary-General of the United Nations shall convene the Commission.

"2. The Commission shall consist of representatives of States which have signed the Statute or have acceded to it. The representatives of other signatories of the Final Act may participate fully in the deliberations of the Commission as observers.

"3. The Commission shall elect its Chairman and other officers, adopt its rules of procedure and decide on its programme of work.

"4. The Commission shall:

(a) Make practical arrangements for the establishment and coming into operation of the Court;

(b) Prepare a relationship agreement between the [International Criminal] Court and the United Nations;

(c) Prepare a Headquarters Agreement;

(d) Prepare draft rules of procedure of the Court;

(e) Prepare staff regulations;

(f) Prepare financial regulations;

(g) Prepare an agreement on the privileges and immunities of the [International Criminal] Court;

(h) Prepare a budget for first year(s);

(i) Prepare the rules of procedure of the Meeting of States Parties [and of any other organ established by the Statute].

"5. The Commission shall meet at the Headquarters of the United Nations.

"6. The Commission shall remain in existence until the conclusion of the first Meeting of the States Parties to the Statute.

"7. The Commission shall prepare a report on all matters within its mandate and submit it to the first Meeting of the States Parties to the Statute.

"8. The Secretary-General of the United Nations shall provide to the Commission such secretariat services as it may require.

"9. The Secretary-General of the United Nations shall bring this resolution to the attention of the General Assembly for any necessary action."